IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 535 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MELAJI BADARJI CHAUHAN - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant(s) : 1,
MS SADHANA SAGAR for Appellant(s) : 1,
MR KT DAVE, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 25/04/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

1. **ADMIT.**

2. In view of the fact that Record and Proceedings pertaining to the case have already been received and as the evidence, which is to be considered, is not much, the learned advocates have made a request to this Court that the appeal be finally heard without waiting for the paper book to be prepared. The learned advocates are having copies of the relevant record and, therefore, at the request of the learned advocates, the appeal has been finally heard today.

3. In this appeal, judgement and order dated 28th February, 2006 passed by the Additional Sessions Judge, Himatnagar in Sessions Case No. 82/2005 has been challenged. By virtue of the impugned judgement and order, the appellant has been held guilty of an offence under the provisions of Section 376(2)(f) of the Indian Penal Code and has been sentenced to undergo Rigorous Imprisonment for 10 years and fine of Rs. 500/-, in default of payment of fine, further one year Rigorous Imprisonment has been imposed.

4. In view of the observation made by the Hon'ble Supreme Court in the case of **State of Karnataka Vs. Puttaraja, AIR 2003 SCW 6429,** name of the victim has not been stated and she has been referred to as 'the victim'.

5. The case of the prosecution against the

appellant, in a nutshell, was as under;

5.1. First Information Report had been filed by the mother of the victim, Jagaba Vijaysingh Ramsingh, P.W. No. 1 (Exh. 7) at Talod Police Station around 9:15 p.m. to the effect that her daughter, who was aged 6 years, had been raped by the accused.

5.2. While giving details with regard to the incident, it had been stated by her in the First Information Report that on 26th April, 2005 when she had gone to take grass, younger sister of the victim, named, Kinjal, had come there and had stated that in a farm, where millet (bajri) had been cultivated, somebody had come and that person was frightening her. In view of the said fact stated by Kinjal, she had gone to the place near the farm where she found that the appellant was getting up from the farm and was trying to run away. At that time, alongwith her pyjama, the victim, who was crying, had come to her. Thereupon she asked the victim as to what had happened. The victim had told her that the appellant had tried to shut her mouth and had thrown her on the land and after taking out her pyjama made her bleed from her private part. In the meantime, brother of her husband had come to the said farm and he had tried to catch hold of the appellant but the appellant could not be caught. Upon knowing the fact, one of the relatives, namely, Jashwantsingh, had come to the place with his jeep and they all had proceeded to Talod Police Station. Near Tajpur,

Laxmansingh, P.W. No. 3, (Exh. 12) saw the appellant walking near the road. On seeing him, Laxmansingh, P.W. No. 3 (Exh. 12) got down from the jeep and caught the appellant. The appellant was also made to sit in the jeep and he too was taken to Talod Police station. At Talod Police Station, Jagaba, P.W. No. 1 (Exh. 7) had filed the First Information Report and, thereafter, the victim had been referred to the Civil Hospital, Himatnagar. Upon medical examination of the victim, it was found that her private part was bleeding and there were some spots of blood on her pyjama. Injuries were also found on her body and private part. As the appellant was also brought to the Police Station, he too was taken to Talod Government Hospital and thereafter to Himatnagar Government Hospital.

5.3. The Sessions Court had considered the evidence of the following main witnesses;

(1) Jagaba Vijaysingh Jhala, mother of the victim, P.W. No. 1 (Exh. 7)
(2) Vijaysingh Ramsingh Jhala, father of the victim, P.W. No. 2 (Exh. 9)
(3) Laxmansingh Ramsingh Jhala, Uncle of the victim, P.W. No. 3 (Exh. 12)
(4) Victim, P.W. No. 4, (Exh. 13)
(5) Kinusingh @ Tinusingh Nanasingh, P.W. No. 5 (Exh 14)
(6) Dr. Bhamini Babulal Pandit, P.W. No. 9 (Exh. 21)
(7) Dr. Purviben Arvindkumar Naik, P.W. No. 10 (Exh.

24)

(8) Niravsingh Pavansingh Gohil, P.W. No. 12 (Exh. 33)

5.4. In addition to the above witnesses, panch witnesses had also been examined and the following documentary evidence had also been considered by the Sessions Court;

(1) First Information Report, (Exh. 8)
(2) Panchnama of the victim's body, (Exh. 16)
(3) Panchnama of the convict's body, (Exh. 17)
(4) Panchnama of place of offence, (Exh. 19)
(5) Panchnama of clothes of the victim, (Exh. 21)
(6) Civil Hospital Certificate, (Exh. 23)
(7) Medical Certificate of the victim, (Exh. 26)
(8) Medical Certificate of the accused, (Exh. 28)
(9) Birth Certificate, (Exh. 30)
(10) Report of Forensic Science Laboratory, (Exh. 35)
(11) Report of examination of Muddamal, (Exh. 36)
(12) Serological Report, (Exh. 40)

5.5. Upon considering the ocular evidence as well as the documentary evidence, the Sessions Court came to the conclusion that the appellant had raped the victim whose age was less than 12 years. In the circumstances, by invoking provisions of Section 376(2)(f) of the Indian Penal code, as age of the victim was less than 12 years, the Sessions Court imposed minimum punishment of 10 years upon the appellant.

6. In the aforestated circumstances against the impugned judgement, this appeal has been filed by the appellant-convict, who has been represented by learned advocate Ms Sadhna Sagar whereas learned APP Shri K.T. Dave has appeared for the State.

7. Learned advocate Ms Sadhna Sagar has submitted that the order passed by the Sessions Court is unjust and improper. According to her the Sessions Court has not considered certain relevant factors and has been guided by considerations other than law and facts as the victim was hardly 6 years old. According to her, from the scene of offence, no blood had been found and, therefore, the appellant should not have been held guilty. For the aforestated reasons, she has strongly submitted that the order of conviction should be quashed and set aside.

8. On the other hand, learned APP Shri K.T. Dave has taken us through the entire evidence and has tried to support the judgement delivered by the Sessions Court. It has been submitted by him that looking to the deposition of the victim and the medical evidence, it is crystal clear that the appellant had committed the offence and it has been submitted by him that the Sessions Court has rightly inflicted minimum punishment upon the accused.

9. We have heard the learned advocates and have also perused the record pertaining to the case.

10. In our opinion, the judgement delivered by the Sessions Court giving reasons for conviction of the appellant is absolutely sound and is based on the evidence, which had been adduced before the Sessions Court.

11. We do not see any reason for the victim, P.W. No. 4, (Exh. 13) to level any false allegation against the appellant with whom she had no animosity. Upon perusal of the evidence of the victim, it appears that the victim was having sufficient understanding and, therefore, oath had been administered to her. She had stated before the Sessions Court that the appellant had caught hold of her and had made her bleed from the place where she used to urinate. She had further stated that her pyjama had been taken out by the appellant and he had mounted upon her. The victim had identified the appellant and she had also identified her clothes. Thus, from the version given by the victim, it is clear that the First Information Report given by Jagaba, P.W. No. 1, (Exh. 7) mother of the victim, had given correct version of the offence committed by the appellant.

12. It is pertinent to note that when the victim, P.W. No. 4 (Exh. 13) had been examined by Medical Officer Dr. Bhamini Babulal Pandit, P.W. NO. 9 (Exh. 21), the victim had given the same version. Upon examining the victim, Dr. Bhamini Babulal Pandit,

P.W. No. 9 (Exh. 21) had found that there were abrasions on the labia minora of the victim and there appears to be redness and the said abrasions were not bleeding. While examining the victim, she found that the victim was feeling pain especially when she was asked to open her thighs. Thereafter, Dr. Purviben Arvindkumar Naik, P.W. No. 10 (Exh. 24) had been examined by the Sessions Court. The said Doctor had also medically examined the victim. She had found that there were abrasion, which could have been caused because of nail, on the left and right cheeks of the victim. She had also found that there were abrasion on the labia minora of the victim and the entire portion was stained with blood. The said Doctor had also found that rape had been committed on the victim. The said witness had taken blood, saliva, vaginal swab and nails of the victim, which had been subsequently forwarded to Forensic Science Laboratory.

13. If one looks at the medical evidence, the report submitted by the Serology department of the Forensic Science Laboratory, (Exh. 40), it can be seen that from the trousers of the appellant, sperm had been found and even from the pyjama of the victim, sperm had been found. Presence of sperm on the vaginal swab as well as on the pyjama of the victim reveals the fact that the offence had taken place. The medical evidence thus supports the version given by the victim.

14. It is also pertinent to note that the ocular evidence is also sufficient to implicate the appellant in the offence. Jagaba, P.W. No. 1 (Exh. 7) has stated in her evidence that upon being informed that somebody was frightening her daughter, when she rushed to the farm, she had seen the appellant-accused and, thereafter, at the same time, an effort was also made to catch hold of the appellant-accused by Laxmansingh, P.W. No. 3 (Exh.12) but unfortunately he could not be caught at that time. Subsequently, when alongwith the victim, when other persons were going to Talod Police Station, on the way, the appellant was found and he was caught at that time.

15. In view of the above evidence and in view of the fact that the victim was hardly 6 years old, in our opinion, the quantum of punishment imposed upon the appellant is just and proper. Birth certificate (Exh. 10) reveals that the date of birth of the victim is 20th March, 1999. The victim was hardly 6 years old and, therefore, minimum punishment, which should have been imposed under the provisions of Section 376(2) of the Indian Penal Code has been rightly imposed by the Sessions Court.

16. In view of the aforestated facts and circumstances, in our opinion, the order passed by the Sessions Court is just and proper and it does not require any interference by this Court. We therefore, dismiss the appeal.

Record and Proceedings shall be returned to the Sessions Court.

(ANIL R. DAVE, J.)(K.S. JHAVERI, J.)

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